*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

**+ <u>WRIT PETITION NO. 6287 OF 2001 AND BATCH</u>**

**% FRIDAY THE FIRST DAY OF APRIL,**

**TWO THOUSAND AND FIVE**

# M/s. GMR Technologies & Industries Limited and others.

...Petitioners.

**Versus**

$ The Transmission Corporation of Andhra Pradesh Limited

(APTRANSCO) and others.

...Respondents.

! Counsel for the Petitioners: Mr. Y. ASHOK RAJ

M/s. C. KODANDA RAM

^ Counsel for the Respondents: MS. G. SUDHA

MR. RAMESH RANGANADHAN

MR. V. AJAY KUMAR

MR. M. SREE RAMULU REDDY

MR. A. RAJASEKHAR REDDY

MR. N. SUBBA REDDY

< Gist:

> Head Note:

**? <u>Cases referred</u>:**

1. 1968 2 S.C.R 366
2. (1970) 1 SCC 582
3. (1979) 2 SCC 409
4. (1997) 7 SCC 251
5. (1999) 4 SCC 727
6. (2004) 6 SCC 465
7. (1995) 5 SCC 482

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH**

**AT HYDERABAD**

**(SPECIAL ORIGINAL JURISDICTION)**

**FRIDAY, THE FIRST DAY OF APRIL**

**TWO THOUSAND AND FIVE**

**PRESENT**

**THE HONOURABLE SRI JUSTICE V.ESWARAIAH**

**W.P.Nos.6287 and 2331 of 2001, 5713, 5955,**
**10201, 22157, 11192 and 6147 of 2000**

**WRIT PETITION No: 6287 of 2001**

Between:

M/s. GMR Technologies & Industries Limited, A Public Limited Company, having its Registered Office at Ravivalasa Village, Tekkali, Srikakuklam District and its Corporate Office at 6-3-866/868, Greenlands, Begumpet, Hyderabad 500 016, represented by its Executive Director, G. Subba Rao.

**...PETITIONER**

**AND**

1. The Transmission Corporation of Andhra Pradesh Ltd,

**(APTRANSCO)**, Represented by its Chairman & Managing Director,

Vidyut Soudha, Hyderabad.

2. The Superintending Engineer (Operations), Eastern Power

Distribution Company of A.P. Limited, Srikakulam.

3. The Senior Accounts Officer (Operation Circle), Eastern Power

Distribution Company of A.P. Limited, Srikakulam.

4. The National Thermal Power Corporation Limited, represented by its

Chairman, Lodhi Road, New Delhi.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, in the nature of Writ of Mandamus or any other appropriate Writ, direction or order declaring the letter No. SE/O/SKL/SAO/HT/D.No.211/2001 dated 29.03.2001 of the Senior Accounts Officer, Operation Circle, E.P.D.C. of A.P. Ltd., the 3rd respondent herein, as illegal and void;

**Counsel for the Petitioner: MR. Y. ASHOK RAJ**

**Counsel for the Respondents: MS. G. SUDHA**

**MR.M. SREE RAMULU REDDY**

**WRIT PETITION No: 2331 of 2001**

Between:

M/s. Andhra Ferro Alloys Limited, Srinivasa Nagar, Chintala Palem (PO), Vizianagaram District, represented by its Managing Director, Mr. Bajendra Khandelwal.

**...PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.
2. The National Thermal Power Corporation Limited, represented by its Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New Delhi.
3. Power Grid Corporation of India Limited, represented by its Chairman, New Delhi.
4. The A.P. State electricity Board, Represented by its Secretary, Vidyut Soudha, Somajiguda, Hdyerabad.
5. A.P. Transmission Corporation Limited, represented by its Chairman and Managing Director, Vidyut Soudha, Somajiguda, Hyderabad.
6. The Superintending Engineer, Operation, Eastern Power Distribution Company of A.P. Limited, Vizianagaram.
7. The Senior Accounts Officer, Operation Cirlce, Eastern Power

Distribution Company of A.P. Limited, Vizianagaram.

**…RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order declaring the demands communicated by the 7th respondent herein i.e., the Senior Accounts Officer, Operation Circle, Vizianagaram through his letters;

1. Lr.No.SE/OP/VZM/HT/D.No.371/2000 dated 05.08.2000;
2. Lr.No.SE/OP/VZM/HT/D.No.436/2000 dated 05.09.2000;
3. Lr.No.SE/OP/VZM/HT/D.No.444/2000 dated 12.09.2000;
4. Lr.No.SE/OP/VZM/HT/D.No.484/2000 dated 09.10.2000;
5. Lr.No.SE/OP/VZM/HT/D.No.531/2000 dated 01.11.2000;
6. Lr.No.SE/OP/VZM/HT/D.No.578/2000 dated 30.11.2000;
7. Lr.No.SE/OP/VZM/HT/D.No.636/2001 dated 01.01.2001; and
8. Lr.No.SE/OP/VZM/HT/D.No.57/2001, dated 30.01.2001;

as illegal and forbid the enforcement of the same

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. A. RAJASEKHAR REDDY**

**MR. RAMESH RANGANADHAN**

**MR. V. AJAY KUMAR**

**WRIT PETITION No: 5713 of 2000**

Between:

M/s. GMR Vasavi Industries Limited, A Public Limited Company, having its Registered Office at Tekkali, Srikakuklam District, represented by its Managing Director, Mr. S.S.N.

Murthy.

**…PETITIONER**

**AND**

1. The National Thermal Power Corporation Limited, represented by its

Chairman, Lodhi Road, New Delhi.

2. The Transmission Corporation of Andhra Pradesh Ltd,

**(APTRANSCO)**, Represented by its Chairman & Managing Director,

Vidyut Soudha, Hyderabad.

3. The Superintending Engineer (Operations), **AP TRANSCO**,

Srikakulam.

4. The Senior Accounts Officer (Operation Circle), **AP TRANSCO**,

Srikakulam.

**…RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a direction or writ in the nature of mandamus declaring that the demand in the sum of Rs.2,84,24,028/- (by letter dated 19.02.2000) and for the sum of Rs.60,44,572.45ps (by letter dated 07.03.2000) by the respondents, as illegal, arbitrary and unlawful, and consequently set aside the said two letters

**Counsel for the Petitioner: MR. Y. ASHOK RAJ**

**Counsel for the Respondents: MS. G. SUDHA**

**MR.M. SREE RAMULU REDDY**

**WRIT PETITION No: 5955 of 2000**

Between:

M/s. Jindal Strips Limited, (Ferro Alloys Division), D.No.58-17-1/1, Sanjivayya Nagar, Near N.A.D. Kotha Road Junction, Visakhapatnam – 9, represented by its Vice President, Shri Sitaram Agarwal.

**...PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New Delhi.

3. Power Grid Corporation of India Limited, represented by its Chairman, New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary, Vidyut Soudha, Somajiguda, Hdyerabad.

5. The A.P. Transmission Corporation Limited, represented by its Chairman and Managing Director, Vidyut Soudha, Somajiguda, Hyderabad.

6. The Superintending Engineer, Operation, A.P. Transco, Vizianagaram.

7. The Senior Accounts Officer, Operation Cirlce, A.P. Transco, Vizianagaram.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or other appropriate Writ, direction or order declaring the following demands communicated by the Superintending Engineer, Operation, A.P. Transco, Vizianagaram through his letters

1. Lr.No.SE/O/VZM/HT/97/2000 dated 28.02.2000;
2. Lr.No.SE/O/VZM/HT/98/2000 dated 28.02.2000;

3. Lr.No.SE/O/VZM/SAO/HT/100/2000 dated 29.02.2000;

4. Lr.No.SE/O/VZM/HT/157/2000 dated 01.04.2000; and

5. Lr.No.SE/O/VZM/HT/203/1999 dated 19.04.1999;

as illegal and forbid the enforcement of the same and direct refund of Rs.69,40,918/- collected from the petitioner

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. A. RAJASEKHAR REDDY**

**MR. RAMESH RANGANADHAN**

**MR. V. AJAY KUMAR**

**WRIT PETITION No: 10201 of 2000**

Between:

M/s. Jindal Strips Limited, (Ferro Alloys Division), D.No.58-17-1/1, Sanjivayya Nagar, Near N.A.D. Kotha Road Junction, Visakhapatnam – 9, represented by Mr. Srinivas Mantha, Manager (Per and Admn.).

**…PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of

Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New

Delhi.

3. Power Grid Corporation of India Limited, represented by its

Chairman, New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary,

Vidyut Soudha, Somajiguda, Hdyerabad.

5. The A.P. Transmission Corporation Limited, represented by its

Chairman and Managing Director, Vidyut Soudha, Somajiguda,

Hyderabad.

6. The Superintending Engineer, Operation, A.P. Transco,

Vizianagaram.

7. The Senior Accounts Officer, Operation Cirlce, A.P. Transco,

Vizianagaram.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or other appropriate Writ, Direction or order declaring the demands communicated by the Superintending Engineer, Operation Circle, Vizianagaram vide Lr.No.SE/O/VZM/Ht/199/2000 dated 29.04.2000 and Lr.No.SE/O/VZM/Ht/260/2000 dated 07.06.2000 as illegal and forbid the enforcement of the same

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. N. SUBBA REDDY**

**WRIT PETITION No: 22157 of 2000**

Between:

M/s. Jindal Strips Limited, (Ferro Alloys Division), D.No.58-17-1/1, Sanjivayya Nagar, Near N.A.D. Kotha Road Junction, Visakhapatnam – 9, represented by Mr. Srinivas Mantha, Manager (Per and Admn.).

**...PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of

Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New

Delhi.

3. Power Grid Corporation of India Limited, represented by its

Chairman, New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary,

Vidyut Soudha, Somajiguda, Hdyerabad.

5. The A.P. Transmission Corporation Limited, represented by its

Chairman and Managing Director, Vidyut Soudha, Somajiguda,

Hyderabad.

6. The Superintending Engineer, Operation, A.P. Transco,

Vizianagaram.

7. The Senior Accounts Officer, Operation Cirlce, A.P. Transco,

Vizianagaram.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or other appropriate Writ, Direction or order declaring the demands communicated by the Superintending Engineer, Operation Circle, Vizianagaram vide

1. Lr.No.SE/O/VZM/HT/301/2000 dated 30.06.2000;
2. Lr.No.SE/OP/VZM/HT/D.No.371/2000 dated 05.08.2000;
3. Lr.No.SE/OP/VZM/HT/D.No.444/2000 dated 12.09.2000;
4. Lr.No.SE/OP/VZM/HT/D.No.436/2000 dated 05.09.2000;
5. Lr.No.SE/OP/VZM/HT/D.No.468/2000 dated 23.09.2000;
6. Lr.No.SE/OP/VZM/HT/D.No.484/2000 dated 09.10.2000;
7. Lr.No.SE/OP/VZM/HT/D.No.531/2001 dated 01.11.2000; and
8. Lr.No.SE/OP/VZM/HT/D.No.532/2001 dated 02.11.2000;

notice for disconnection of supply on or before 17.11.2000 as illegal and forbid the enforcement of the same

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. A. RAJASEKHAR REDDY**

**MR. RAMESH RANGANADHAN**

**MR. V. AJAY KUMAR**

**WRIT PETITION No: 11192 of 2000**

Between:

M/s. Andhra Ferro Alloys Limited, Srinivasa Nagar, Chintala Palem (PO), Vizianagaram District, represented by its Managing Director,
Mr. Bajendra Kandelwala.

**...PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of

Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New

Delhi.

3. Power Grid Corporation of India Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89 Nehru Place,
New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary,

Vidyut Soudha, Somajiguda, Hdyerabad.

5. The A.P. Transmission Corporation Limited, represented by its

Chairman and Managing Director, Vidyut Soudha, Somajiguda,

Hyderabad.

6. The Superintending Engineer, Operation Circle, A.P. Transco,

Vizianagaram District, now re-designated, as The Superintending

Engineer, Operation Circle, Eastern Power Distribution Company of

A.P. Ltd., Vizianagaram.

7. The Senior Accounts Officer, Operation Cirlce, A.P. Transco,

Vizianagaram.

**…RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or other appropriate Writ, Direction or order declaring the demands communicated by the Superintending Engineer, Operation Circle, Vizianagaram through his letters (1) Lr.No.SE/O/VZM/HT/199/2000 dated 29.04.2000 and (2) Lr.No.SE/O/VZM/HT/260/2000 dated 07.06.2000, as illegal and forbid the enforcement of the same

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. A. RAJASEKHAR REDDY**

**MR. RAMESH RANGANADHAN**

**MR. V. AJAY KUMAR**

**WRIT PETITION No: 6147 of 2000**

Between:

M/s. Andhra Ferro Alloys Limited, Srinivasa Nagar, Chintala Palem (PO), Vizianagaram District, represented by its Managing Director,
Mr. Bajendra Kandelwala.

**…PETITIONER**

**AND**

1. The Government of India, represented by its Secretary, Ministry of

Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New

Delhi.

3. Power Grid Corporation of India Limited, represented by its

Chairman, Hemkunt Chambers, 10th Floor, 89 Nehru Place,
New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary,

Vidyut Soudha, Somajiguda, Hdyerabad.

5. The A.P. Transmission Corporation Limited, represented by its

Chairman and Managing Director, Vidyut Soudha, Somajiguda,

Hyderabad.

6. The Superintending Engineer, Operation Circle, A.P. Transco,

Vizianagaram District.

7. The Senior Accounts Officer, Operation Cirlce, A.P. Transco,

Vizianagaram.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or other appropriate Writ, Direction or order declaring the demands communicated by the Superintending Engineer, Operation, Vizianagaram through his letters

1. Lr.No.SE/O/VZM/HT/97/2000 dated 28.02.2000;
2. Lr.No.SE/O/VZM/HT/98/2000 dated 28.02.2000;
3. Lr.No.SE/O/VZM/SAO/HT/100/2000 dated 29.02.2000;
4. Lr.No.SE/O/VZM/HT/157/2000 dated 01.04.2000; and
5. Lr.No.SE/O/VZM/HT/204/1999 dated 19.04.1999;

as illegal and forbid the enforcement of the same and direct refund of Rs.33,52,892/- collected from the petitioner

**Counsel for the Petitioner: M/S. C. KODANDA RAM**

**Counsel for the Respondents: MR. A. RAJASEKHAR REDDY**

**MR. RAMESH RANGANADHAN**

**MR. V. AJAY KUMAR**

**The Court Made the following order:**

**COMMON ORDER:**

Heard Sri L. Nageswara Rao, Senior Advocate and Sri C. Kodanda Ram, Learned Counsel for the petitioners and Sri N. Subba Reddy, Sri Ramesh Ranganadhan, Sri M. Sree Ramulu Reddy and
Ms. G. Sudha learned counsel appearing for the respondents.

2. Andhra Ferro Alloys Limited situated at Vizianagaram District filed three writ petitions in WP.No.6147 of 2000, WP.No.11192 of 2000 and WP.No.2331 of 2001 to declare the supplementary demands of the Superintending Engineer, Operation, A.P.Transco, Vizianagaram, re-designated as the Superintending Engineer, Operation, Eastern Power Distribution Company of A.P. Limited, Vizianagaram and the Senior Accounts Officer of the said operation circle.

3. GMR Vasavi Industries Limited situated at Tekkali, Srikakulam District filed WP.No.5713 of 2000 seeks a Writ of Mandamus to declare the demand of the respondents by way of supplementary bills as illegal, arbitrary and unlawful.

4. GMR Technologies & Industries Limited situated at Ravivalasa Village, Tekkali, Srikakulam District filed WP.No.6287 of 2001 seeking a Writ of Mandamus to declare the letter of the Senior Accounts Officer, Operation Circle, EPDC of AP Limited, making an additional demand as illegal and void.

5. Jindal Strips Limited (Ferro Alloys Division) situated at Visakhapatnam, filed three writ petitions in WP.No.5955 of 2000, WP.No.10201 of 2000 and WP.No.22157 of 2000 to declare additional demands made by the Superintending Engineer, Operation Circle, Vizianagaram as illegal and unlawful.

6. Petitioners are High Tension consumers of the Transmission Corporation of Andhra Pradesh Limited (**APTRANSCO**) and manufacturers of various Ferro alloys. They are power intensive units and power is one of the main raw materials apart from chrome ore, Quartz, coal etc. It is stated that the Ferro alloy industries in India were in difficult market situations and the industry was forced to accrue financial losses resulting in closure of many units and during the said period the exports were also badly affected. Therefore, the Indian Ferro Alloys Producers Association made a representation to the Central Government for supply of regular and reliable power, from the power stations of National Thermal Power Station (NTPC) an undertaking of Ministry of Power, Union of India, to export oriented Ferro alloy units in order to boost their production for export purposes and compete in the international market. The Ministry of Power, Government of India considered the requests of the Ferro Alloy units as well as that of the State Government of Andhra Pradesh. Accordingly, the Ministry of Power, Government of India addressed a letter dated 21.03.1995 to the Central Electricity Authority deciding to allocate certain units of power out of 15% unallocated share of Central Government.

7. It is also pertinent to note that the then Chief Minister of Andhra Pradesh vide his letter dated 09.04.1994 requested the Ministry of Power, Government of India, to supply power directly from NTPC Stations through state electricity grid on collection of the wheeling charges to such Ferro alloy units earmarked for 100% export of alloy production. In response to the said letter, the Ministry of Power addressed a letter dated 30.04.1994 to the then Chief Minister, to supply power from Central sector stations to the 100% export oriented Ferro alloy units during the off peak hours on certain terms and conditions. Accordingly, certain MW of power was allocated to six export oriented Ferro alloy units in the State out of 15% unallocated share of the Central Government in southern region between July, 1994 to October, 1995 and continued upto 2000.

8. GMR Vasavi Industries Limited was allocated 7 MW of power, Jindal Strips Limited was allocated 7 MW of power, Andhra Ferro Alloys Limited was allocated 4 MW of power, Ferro Alloys Corporation Limited was allocated 16 MW of power, VBC Ferro Alloys Limited was allocated 15 MW of power and Nava Bharat Ferro Alloys Limited was allocated 20 MW of power respectively. All these units were the consumers of the **APTRANSCO** and they continued to be the consumers of the said corporation.

9. Sri L. Nageswara Rao, Senior Advocate appearing for the petitioners submits that the petitioners in WP.Nos.5713 of 2000 and WP.No.6287 of 2001 were allocated 10 MW power by the Ministry of Power, Union of India for its 100% export oriented Ferro Alloys unit from out of 15% unallocated power generated from Ramagundam STPS at NTPC tariff during off peak hours on collection of wheeling charges by APSEB. But the petitioners availed 7 MW power only since March, 1995 though 10 MW power was allocated from out of 15% unallocated portion of power from STPS, Ramagundam. It is stated that APSEB was directed to collect the wheeling charges from the petitioners for the power supplied to them out of 15% unallocated share. Accordingly, the APSEB vide its letter dated 20.05.1995 agreed to wheel the power on collection of the wheeling charges as per APSEB rates. By letter dated 19.07.1995 APSEB agreed for accounting and billing from 01.11.1994 in respect of M/s. Ferro Alloys Corporation, Vizianagaram and M/s. VBC Ferro Alloys Limited, Medak and in respect of GMR Vasavi Industries Limited with effect from 23.03.1995. It is stated that the energy shall be billed from the State Ferro Alloys Companies at NTPC rates plus Power Grid Corporation of India Limited (PGCIL) transmission charges plus electricity duty at 6 Ps/Kwh apart from wheeling charges to APSEB/**APTRANSCO.**

10. There is no dispute that GMR Technologies & Industries Limited have availed 7 MW continuous power for 24 hours in stead of 10 MW during off peak hours as per the letter of Director, Ministry of Power, Union of India dated 11.07.1995. The billing procedure was indicated by APSEB by its memo dated 19.07.1995. The memo clearly states that Gross NTPC energy shall be charged at NTPC tariff plus PGCIL transmission charges plus electricity duty at 6 Ps/Kwh. It is alleged that several additional claims made by the NPTC, from 1995 to 1998 through notifications during June 1997 to 1998 towards gross incentives, in addition to the NTPC tariff, were not at all intimated to the petitioners by APSEB and the

petitioners came to know about the same only through the counter affidavit filed by the respondents. It is stated that further bills were raised by the APSEB/**APTRANSCO** informing the petitioners about the short billing for 7/97 to 12/98 and called upon the petitioners to pay huge sums without there being any whisper about the NTPC's claim regarding the additional claims. Petitioners were demanded an amount of Rs.2,84,24,028/- stating that APSEB had paid the said amount to NTPC towards incentives, income tax, foreign exchange rate variation and water cess; without furnishing any bills supplied by the NTPC. Therefore, the petitioners have requested the APSEB time and again to furnish the particulars of the said bills but the respondents without furnishing the same served disconnection notices on the petitioners, on the threat of disconnection the amounts were paid under protest. Therefore, the said demand and collection of the said amounts is illegal, arbitrary and unlawful and it is liable to be set aside.

11. Learned senior advocate appearing for the petitioners further submits that APSEB, its successors, **APTRANSCO** and EPDC of AP Limited as the case may be and the present successor is barred from raising impugned demands as per the well established principle of "Promissory Estoppel". The Principle of Promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between then and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced. A Public body is not exempted from its liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

12. It is stated that if a representation is made that a benefit of substantive nature will be granted or if the person is already in receipt of the benefit that will be continued and not be substantially varied, then the same could be enforced. The decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. In support of the said principle the learned senior counsel relied on the following judgments:

1. **U.O.I. & ORS v. M/S. INDO – AFGHAN AGENCIES LTD**

2. **CENTURY SPINNING AND MANUFACTURING COMPANY LTD. AND ANOTHER v. THE ULHASHANAGAR MUNICIPAL COUNCIL AND ANOTHER**

3. **M/S. MOTILAL PADAMPAT SUGAR MILLS CO. LTD v. STATE OF UP AND OTHERS**

4. **PAWAN ALLOYS & CASING PVT. LTD., MEERUT v. UP STATE ELECTRICITY BOARD AND OTHERS**

5. **PUNJAB COMMUNICATIONS LTD v. UNION OF INDIA AND OTHERS**

6. **STATE OF PUNJAB V. NESTLE INDIA LTD. AND ANOTHER**

It is further stated that there is no Privity of Contract between **APTRANSCO** and the petitioner company. The petitioners are not bound by the terms of the agreement between NTPC and APSEB/ **APTRANSCO.** Without any support from a Statutory provision or a covenant in a contract, the **APTRANSCO** does not have either power or jurisdiction to make the demand for recovering the additional payments alleged to have been made to the NTPC. He contends that the action of the **APTRANSCO** is unfair and unjust and it being the instrumentality of the State, it's duty and action must be fair and in a just manner. Petitioners cannot be made to suffer due to callousness and negligence of **APTRANSCO**. In support of this contention he has placed reliance on the judgment of the Apex Court in **LIC v. CONSUMER EDUCATION** at Paras 19 and 24 to 27.

13. Sri C. Kodanda Ram, learned counsel, appearing for some of the petitioners submits that the APSEB/**APTRANSCO** clearly indicated the methodology of billing and in the memos dated 20.05.1995 and 19.07.1995 issued by the APSEB/**APTRANSCO** in respect of the said power of Central unallocated quota from NTPC and the petitioners have to pay for the power supplied at the NTPC tariff/rate notified every month. For the power supplied by APSEB, payment would be made at the prevailing rates of APSEB. Insofar as the unallocated NTPC power being transmitted over the system of the APSEB, wheeling charges @ 15% were payable to the APSEB. But the APSEB cannot unilaterally revise the bills with retrospective effect after the lapse of five years. It is stated that at times there are instances when APSEB revised their demands reducing substantially from Rs.90,29,735/- to Rs.69,40,918/- on verification and the bills demanded by APSEB were not supported by any particulars and therefore, the demand made by APSEB/**APTRANSCO** do not reflect proportionate amount said to have been demanded by NTPC due to revision of the tariff.

14. It is stated that there is sinister lack of transparency in the action of the **APTRANSCO,**

demanding additional amount pursuant to the demand made by the NTPC. The learned counsel submits that in the absence of any particulars furnished for the demand made by the NTPC to APSEB it cannot be said that the said demand made by APSEB is in proportion to the total demand with reference to the NTPC power utilized by the petitioners.

15. Counter has been filed on behalf of APSEB/**APTRANSCO**/ concerned power distribution companies stating that the petitioners were furnished full details for the basis of their claim during the meetings held and notifications issued from time to time by Government of India on the tariff applicable for NTPC rates and also the tariff notification dated 02.11.1992, issued by the Government of India in exercise of the power vested in it under Section 43 (A) (2) of the Electricity (Supply) Act, 1948 (for short 'the Act') and the said tariff and the tariff conditions are binding on all the beneficiaries who receive NTPC power. The demand made by the APSEB/**APTRANSCO** is proportionate to the power consumed by the petitioners in view of the revised bill of NTPC to pay the differential amount at the NTPC tariff. Petitioners are under obligation to pay the amount to **APTRANSCO** as per the arrangements prescribed in the memos dated 20.05.1995 and 19.07.1995. Petitioners cannot escape the liability of payment on the ground that there is no privity of agreement between the NTPC and APSEB/**APTRANSCO,** as they cannot disown the liability of the demand of NTPC tariff. There is no agreement between the petitioners and the NTPC. The petitioners are the customers of APSEB and there is no additional demand in respect of the energy supplied by **APTRANSCO** but the additional demand is made proportionately in respect of the NTPC power as per the revised differential NTPC tariff.

16. Learned counsel appearing for the petitioners submits that the alleged claim by NTPC towards the revised differential NTPC tariff and the claim of PGCIL has not been furnished and no proof of documents have been filed supporting the supplementary claim of NTPC or PGCIL and the supplementary bills, after five or six years after the goods are exported to other countries is without any legality or has any valid basis. It is stated that the petitioners fixed the price/rates of the goods manufactured by them basing on the electricity rate per unit and made exports and their accounts have been audited and income tax returns have been filed and their position has been changed. Therefore, it is not possible for them to pay the demands made after five or six years as they cannot revise the rates of their goods, which have already been sold. It is stated that the petitioners cannot put forward any claim against its customers on the ground that it has received supplementary bills from

**APTRANSCO** in respect of the goods supplied and they cannot recover amounts from their customers as the transactions have already been over. Therefore, the collection of any other amounts on the basis of revised tariff is illegal and unsustainable.

17. NTPC filed counter stating that no specific relief was claimed against NTPC and the NTPC is a Government company established for generating power and it is having generating stations through out the country in four regions. The object of the Generating Company includes establishment, operation, and maintenance of generating stations and tie-lines, sub-stations and main transmission lines connected therewith, distribution of power to the end users is not part of the activities envisaged for the generating companies and for the purpose of transmission separate companies were established. NTPC supplies power to regional grid from where various State Electricity Boards are drawing the power. Supply of power to individual consumers and industries of the respective State is done by the State Electricity Boards i.e. **APTRANSCO** including various export oriented units such as the petitioners. Petitioners are not the customers of NTPC and admittedly the NTPC is not billing them. APSEB is split up into two corporations – Generation and Transmission. **APTRANSCO** is split into several other distribution companies.

18. It is stated that the request of the Ferro Alloys Units for additional was accepted as per the letters of Ministry of Power, Government of India dated 30.04.1994 and 02.05.1994 to the Chief Minister of Andhra Pradesh stating that export oriented units would continue to be the customers of APSEB and therefore, it cannot be denied that the petitioners are the customers of **APTRANSCO.**

19. It is stated that the bills for the sale of electricity are being raised by **APTRANSCO** to the petitioners as per the agreement between the **APTRANSCO** and NTPC though the petitioners are not party to the said agreement. The allocation of power was done by the Ministry of Power, Government of India, to supply power as per the NTPC tariff. NTPC has not at all fixed the terms and conditions and has not raised any bill to the petitioners. NTPC tariff, payable by APSEB/ **APTRANSCO,** was fixed in terms of the statutory notifications issued by Government of India till 15.05.1995 and thereafter as per the orders issued by the Central Electricity Regulatory Commission (CERC).

20. The Union of India also filed a counter stating that the petitioners are the customers of APSEB/ **APTRANSCO** and the issue pertaining to NTPC tariff is a matter between the petitioners and the **APTRANSCO.** As per the existing policy, on allocation of NTPC power to Ferro Alloy Units, the petitioners are required to pay for energy consumed by them to the said APSEB/ **APTRANSCO** as per the terms and conditions of allocation at the rates of NTPC tariff and wheeling charges of APSEB/**APTRANSCO** and to PGCIL as applicable. NTPC tariff and wheeling charges of APSEB/**APTRANSCO** and PGCIL are to be recovered by the APSEB/**APTRANSCO** from the petitioners. NTPC and PGCIL have no direct involvement with any of the petitioner companies. Petitioners were allocated specific power out of the 15% unallocated power generated from Ramagundam STPS at NTPC tariff during off peak hours and the wheeling charges have to be paid by the petitioners to APSEB and PGCIL. Since the petitioners continue to be the customers of APSEB/**APTRANSCO** bills under reference have been raised by them.

21. Learned counsel for the petitioners mainly relying on the letters of APSEB dated 20.05.1995 and 19.07.1995 submits that the said power allocated to the petitioners from out of 15% unallocated portion from NTPC is agreed to be billed by APSEB in a particular methodology and as per the memo dated 19.07.1995 the methodology for revision of c.c bills of M/s. Ferro Alloys Corporation is from 01.11.1994 and in respect of M/s. GMR Vasavi Industries Limited is from 23.03.1995 as indicated in the said memo. APSEB/**APTRANSCO** has correctly billed and collected charges for the energy as per the methodology of memo dated 19.07.1995. Therefore, it is not open for the APSEB/ **APTRANSCO** to issue revised/supplementary bills alleging that there is a revision of rates in respect of the NTPC tariff.

22. Admittedly, even as per the said memo of APSEB dated 19.07.1995 the gross energy charges payable by the petitioners in respect of the said power supplied to them from out of 15% of the unallocated power at NTPC tariff plus PGCIL transmission charges plus electricity duty at 6 Ps/Kwh in addition to the wheeling charges of APSEB/**APTRANSCO.** Therefore, the only question that arises for consideration is as to what is NTPC tariff.

23. Admittedly, the quantum of NTPC tariff is not at all indicated to the petitioners by APSEB/**APTRANSCO.** The contention of the petitioners is that the NTPC tariff is payable by the APSEB to the NTPC as per the agreement entered into by them and the petitioners are not parties to the said agreement and, therefore, the petitioners are not bound by the said agreement.

24. NTPC is power generator and bulk power supplier. The bulk power supply agreement was entered into by the NTPC and APSEB along with other State Electricity Boards on 28.09.1993. As per clause 2.1 of the said agreement the power allocated from Ramagundam STPS against the Bulk Power Recipients is as follows:

**<u>Bulk Power Recipients</u> Unit**

**a) Andhra Pradesh MW 500 580**

**b) Karnataka MW 345 245**

**c) Kerala MW 245 245**

**d) Tamil Nadu MW 479 470**

**e) Pondicherry MW 50 50**

**f) Goa MW 100 100**

**g) Unallocated Power MW 310 310**

25. As per Para 5 of the said agreement the tariff and terms and conditions for energy supplied/to be supplied by NTPC from Ramagundam STPS shall be as per the notification F.No.3/19/(iii) 920 US (CT) dated 02.11.1992 issued by the Government of India, Ministry of Power and as notified by the Government of India from time to time under Section 43-A of Electricity (Supply) Act, 1948 (as amended). All

charges under the agreement shall be billed by NTPC and shall be paid by the power recipients such as APSEB/**APTRANSCO** in accordance with the provisions of the Clause of appendix.

26. As per Section 43 (A) (1) of the Act a Generating Company is entitled to enter into a contract for the sale of electricity generated by it with any electricity board. As per Section

43 (A) (2) the tariff for the sale of electricity by a Generating Company to the Board shall be determined in accordance with the norms regarding operation and the Plant Load Factor as may be laid down by the Authority and in accordance with the rates of depreciation and reasonable return and such other factors as may be determined, from time to time, by the Central Government, by notification in the Official Gazette. Therefore, the Central Government is entitled to fix the tariff by notification for the sale of electricity by NTPC.

27. Accordingly, the Ministry of Power, Government of India issued the said notification dated 02.11.1992 in exercise of the power vested in it under Section 43 (A) (2) of the Act determining the terms and conditions and the tariff for the power supply from Ramagundam STPS of NTPC, a Generating Company wholly owned by the Central Government, to various electricity boards, States and Union Territories.

28. Clause 1 of the said notification deals with generation and tariff. The tariff for sale of power from STPS (2,100 MW) is determined on two part basis (excluding taxes, duties, cess and levies which would be paid additionally) as under:

a. **Fixed Charges: @ RS.382.32 crores per year with effect from 01.11.1992.**

b. **Variable Charges: 37.66 (Ps/KWh) with effect from 01.11.1992. The variable charges are subject to fuel price adjustment as per formula annexed at Annexure – I.**

The payment of fixed charges shall be made by the beneficiaries to NTPC each month. The fixed charges have to be determined based on the amounts capitalized in the accounts up to 31$^{st}$ March, 1992. The impact of additional capital expenditure capitalized in each financial year during the tariff period shall be determined by Central Government immediately on finalization of accounts. The payment of variable charges also shall be paid by the beneficiaries to the NTPC each month. The fixed charges will be paid to the NTPC by the electricity boards each month apart from certain incentives/disincentives. Incentives will be determined by the Central Government.

29. As per clause 5 to 7 of the notification if there is any variation in foreign exchange as determined by the Central Government at the end of each financial year it is also to be paid

by electricity boards to NTPC. As per the said notification, the fixed charges and the variable charges as regards to the generation tariff shall come into force from 01.11.1992 and shall remain in force till 31.10.1997. In case a new tariff for the period beyond 31.10.1997 is not finalized before that date, the beneficiaries shall continue to pay for the power supplied from the STPS on ad hoc basis which will be adjusted against tariff due when tariff is determined by the Central Government. The payment of bills are made by the electricity boards through irrevocable revolving Letter of Credit (LC) opened in favour of NTPC and the letter of credit shall be without any limitation or restriction with regard to the manner and dates when the bills can be presented to the bank by NTPC. The bills so presented by NTPC to the bank shall be promptly paid on their presentation.

30. Clause 8 of the said notification deals with the levies, taxes, duties, cess etc. The tariff mentioned in the said notification is exclusive of any statutory taxes, levy, duties, cess or any other kind of imposition whatsoever imposed/charges by the State or Central Government or any local bodies/authorities on generation of electricity including auxiliary consumption or on any other types of consumption, transmission, sale or on supply of power/energy and/or in respect of any of its installations associations associated with Generating sections and/or on Transmission system. The total amount of such taxes, duties, cess etc., payable by NTPC to the authorities concerned in any month on account of the said taxes, duties, cess etc., as referred to above shall be borne and additionally paid by the beneficiaries to NTPC and the same shall be charged in the monthly bills raised by NTPC on the beneficiaries in the proportion of energy drawn by them from NTPC. Incidence of tax liability on NTPC as per the Income Tax Act in force from time to time shall be recovered from the beneficiaries duly certified by statutory auditors of NTPC. The allocation of the income tax liability to the respective power stations will be in proportion to the capacity of NTPC in operation at the beginning of the respective financial year. The income tax allocated to the beneficiaries will be in proportion of their energy drawls during the year to which the income tax pertains.

31. It is pertinent to note that the Government of India from time to time enhanced the fixed charges by different notifications. The perusal of the notification dated 14.05.1999 issued by the Government of India in exercise of its powers vested under Section 43 (A) (2) of the Act in partial modification of terms and conditions of the earlier notification dated 02.11.1992 as revised from time to time goes to show that fixed charges were revised and increased as

against the fixed charges of Rs.382.37crores per year with effect from 01.11.1992. The revised fixed charges from time to time are as under:

| **Effective Date** | **Impact (Rs. Crs. Per year)** | **Revised Fixed Charges (Rs. Crs. Per Year)** |
|---|---|---|
| **01.11.1992 – 31.03.1993** | **1.754** | **384.074** |
| **1993-94** | **6.148** | **388.488** |
| **1994-95** | **9.176** | **391.498** |
| **1995-96** | **13.941** | **440.981** |
| **1996-97** | **16.604** | **443.844** |
| **1997-98 onwards** | **17.529** | **444.569** |
| **With 18% ROE w.e.f 01.11.1998** | **19.431** | **482.831** |

The above fixed charges have been determined based on the amounts capitalized in the accounts up to the period 31.03.1997 (excluding effect of foreign exchange variation). Other terms & conditions of the principal notification dated 02.11.1992 (as amended) would remain unchanged. This notification shall form integral part of the principal notification dated 02.11.1992 along with amendments issued from time to time and shall be read in conjunction with the same.

32. Learned senior counsel, Sri N. Subba Reddy, appearing for the electricity board submits that the NTPC claimed an amount of Rs.92 crores in October 1999 towards the supplementary claims pertaining to the period ranging from 1992-93 onwards up to August 1999. The supplementary bills were issued as per the demands raised by NTPC and PGCIL as per the tariff notifications issued by the Government of India on tariff applicable for NTPC Ramagundam Power Station were furnished along with the copies of the subsequent notifications in which the Government of India notified the amounts of Incentive, Additional Fixed charges on account of increased depreciation increase in ROE, increase in capital cost, Foreign Exchange variation etc. were give to the representatives of the petitioners. The details of the claims were explained to the representatives of all the

petitioners. It is submitted that the Government of India notified the Incentive etc, after substantial period of expiry of the financial year to which such incentive pertains. Thus there is inherent time lag in the procedure for claiming of incentive etc. The pricing of goods on the basis of charges of current year is not very relevant where supplementary claims are bound to be there in the arrangements of NTPC allocations. It is stated that the said claim of Rs.92 crores made by NTPC could not be collected by the **APTRANSCO** from its consumers since 1992-93 and therefore, the said amount is passed on the present and future consumers including the petitioners. It is stated that no assurance has been given prescribing any fixed rate of NTPC tariff by APSEB/ **APTRANSCO** in its memos dated 20.05.1995 and 19.07.1995 and the petitioners are bound by NTPC tariff/rates in respect of the energy supplied to them by NTPC. As per the demands raised by NTPC and PGCIL and in view of the revised tariff notification issued by the Government of India the **APTRANSCO** paid the amounts relating to the tariff rate as claimed by NTPC and PGCIL and only a proportion of the charges claimed by NTPC and PGCIL are demanded from the beneficiaries prorata to the energy drawn by them with reference to the total energy supplied by NTPC. The energy drawn by all the beneficiaries including **APTRANSCO** attracts all the components of tariff including Incentive, Tax, Water Cess etc. Therefore, petitioners are legally bound to pay the supplementary demands.

33. The notification dated 02.11.1992 issued by the Government of India in exercise of its power vested under Section 43 (A) (2) of the Act and as revised from time to time is having a statutory force and therefore, it cannot be said that the petitioners are unaware of the said statutory notification. The notification was in existence even before particular power was supplied to the petitioners from out of the 15% unallocated share of Government of India. NTPC tariff was fixed by the Government of India by the said notification. Therefore, it cannot be said that the petitioners are not bound to pay the supplementary demands at NTPC tariff. NTPC tariff includes fixed and variable charges, incentives, foreign exchange variation, levies, taxes, duties and cess as contemplated under clause 8 of the said notification. NTPC tariff means total production cost generated by the NTPC apart from the taxes, duties, cess, levies, incentives etc., payable by and to the NTPC.

34. In view of the aforesaid facts, I am of the opinion that the principle of “Promissory estoppel” or “Legitimate expectation” does not apply to the facts of the case as there is no specific and unambiguous and certain promise made by the APSEB/**APTRANSCO** to the

petitioners. In fact, in the memos of the APSEB/**APTRANSCO** dated 20.05.1995 and 19.07.1995 it is specifically stated that he petitioners are liable to pay the NTPC rates. NTPC rates or tariff means the tariff fixed by the Central Government for the sale of power by NTPC. Therefore, I am of the opinion that even though the position of the petitioners has been altered i.e., to say, the goods manufactured by them were already sold and accounts were completed and though the demand made by way of supplementary bills is a burden on the petitioners but still they cannot avoid the statutory liability as they are liable to pay the cost of the power supplied to them from NTPC out of the 15% unallocated quota of the Government of India. The Government of India alone fixed the NTPC tariff and directed to supply the power at NTPC tariff alone and if the demanded amount is only the NTPC tariff the petitioners cannot have any legal objection for payment of the same.

35. Therefore, the further question that arises for consideration as to whether the supplementary demand is in proportion of the charges claimed by NTPC/GPCIL from the petitioners in prorate to the energy drawn by them out of the 15% unallocated share of the Government of India. The petitioners are admittedly the consumers of the APSEB. The APSEB fairly admitted in the counter that **APTRANSCO** cannot revise the tariff to the consumers since 1992-93 to recover the additional demand of Rs.92 crores from their consumers as the rates supplied by the APSEB/**APTRANSCO** were fixed to all consumers – commercial, residential, agricultural etc. Therefore, the APSEB/**APTRANSCO** cannot revise the bill to the consumers. It is further stated that naturally the said additional demand has to be passed on to the present and future consumers. Insofar as the petitioners are concerned they are the consumers of APSEB/**APTRANSCO** in respect of certain power on par with other consumers and the APSEB/**APTRANSCO** cannot demand the revised/supplementary bills in respect of the energy supplied by APSEB to the petitioners. But the APSEB/**APTRANSCO** is entitled to collect the revised tariff insofar as the energy of the NTPC supply out of the 15% unallocated quota of the Central Government is concerned. Therefore, any demand by the APSEB/**APTRANSCO** shall be in proportion to the total energy supplied by NTPC to all its beneficiaries and in proportion to the energy consumed out of the 15% unallocated quota.

36. The petitioners are liable to pay the NTPC tariff for the energy consumed by them and merely because the revised bills were issued after a period of five or six years it cannot be said that the APSEB/ **APTRANSCO** is estopped from issuing the supplementary bills. The petitioners having not questioned the notifications fixing the generating tariff of the power

generated by the NTPC, merely stated that the tariff notification issued by the Ministry of Power, Government of India, are not applicable to them in view of the agreement entered into by the NTPC and the APSEB/**APTRANSCO** to which they are not a party. Admittedly, the petitioners are the beneficiaries of the power allocated to them out of the 15% unallocated share of the Central Government and no extra charges were levied by the APSEB/**APTRANSCO** except the NTPC rates, wheeling charges, transmission charges of PGCIL plus electricity duty at 6 Ps/Kwh and other cesses and taxes as per the notifications. Therefore, the petitioners are bound to pay the revised rates at NTPC tariff.

37. No doubt, there is a delay in issuing the notifications by Ministry of Power, Government of India, revising the NTPC rates. The APSEB/**APTRANSCO** is only a medium of transmission in respect of the particular unallocated power supplied to the petitioners from the Ramagundam STPS, as petitioners being the consumers of the APSEB/**APTRANSCO.** The APSEB/**APTRANSCO** is bound to pay the revised demands made by the NTPC and the APSEB/ **APTRANSCO** is entitled to demand proportionately from the petitioners to the extent of the power consumed by them out the said unallocated power at NTPC rates. The Electricity Board cannot pass on the entire demand what has been passed on to it by NTPC to the petitioners except the proportionate demand for the power supplied to them from out of the 15% unallocated power. It is stated that after 1999-2000 onwards the petitioners have stopped utilizing power from out of the 15% unallocated power and as the petitioners became 100% customers/consumers of the APSEB/ **APTRANSCO** and they are paying the charges as per the rates fixed by the APSEB/**APTRANSCO** but the dispute is with regard to the revised demands from 1994 to 1999 in respect of the portion of the power allotted to the petitioners by the Ministry of Power, Government of India out of the 15% unallocated share only.

38. Learned counsels appearing for the petitioners submit that the action of the APSEB/**APTRANSCO** in demanding to pay the enhanced rate of NTPC tariff is illegal, arbitrary and discriminatory, as the APSEB/ **APTRANSCO** has not communicated its supplementary demands to its other consumers; except the petitioners.

39. I am of the opinion that other consumers have nothing to do with NTPC rates. The

APSEB/**APTRANSCO** supplies power at the rates fixed by it and they collect the bills for the same on month-to-month basis. Obviously, the APSEB/**APTRANSCO** cannot revise its bills for all its consumers except the petitioners to limited extent, as they are a different class by themselves, being the beneficiaries of certain power at NTPC tariff/rate from out of the 15% unallocated power as allotted by the Ministry of Power, Government of India. Therefore, insofar as the said power supplied to the petitioners is concerned they are bound to pay the supplementary demands at NTPC tariff pursuant to the notifications issued by the Ministry of Power, Government of India towards the enhancement of fixed, variable charges, variation in foreign exchange, cess, income tax, levies and incentives payable to the NTPC by the APSEB/**APTRANSCO.** Therefore, it cannot be said that the petitioners were discriminated in making them alone liable to pay the supplementary demands made by the NTPC in respect of the power supplied from out of 15% unallocated share from NTPC, utilized by the petitioners. In every business there would be some hazards. The payment of subsequent supplementary demands of the NTPC by the petitioners is one such business hazard, which cannot be avoided as the said demand was made in accordance with the statutory notifications.

40. Therefore, I am of the opinion that the petitioners are liable to pay the revised tariff as per the notifications issued by the Ministry of Power, Government of India in respect of the power drawn by them from out of the 15% unallocated portion of power from NTPC and accordingly the writ petitions are disposed of with the following observations and directions.

1. Petitioners are liable to pay the revised/supplementary demands in respect of the power supplied to them from out of the 15% unallocated portion of power from NTPC as per the notifications fixing the NTPC tariff by the Ministry of Power, Government of India dated 02.11.1992 modified/revised from time to time apart from the payment of incentives, foreign exchange variation, levies, taxes, duties, cess etc payable by and to NTPC as per the notification.

2. The APSEB/**APTRANSCO** is entitled to demand only proportionate differential NTPC tariff in proportion to the power supplied to the petitioners from out of the 15% unallocated portion of power from NTPC to the bulk power recipients.

3. To determine the final differential amount payable by the petitioners, the APSEB/**APTRANSCO** is directed to issue proposed demand proposing as to why the differential demands towards the supplementary bills pertaining to revised

notifications of the Government of India from to time and as per the demands made by the NTPC shall not be collected from the petitioners within eight weeks from the date of receipt of a copy of this order and on such proposed order being served, it is open for the petitioners to submit explanations with three weeks thereafter. After submission of the explanations, the APSEB/**APTRANSCO** shall pass final orders directing the petitioners to pay the supplementary/revised demands in respect of the power supplied to them from out of the 15% unallocated portion of power from NTPC as directed by the Ministry of Power, Government of India.

4. If any excess amount is paid by the petitioners the APSEB/**APTRANSCO** shall refund the same or adjust the said excess amount against the future bills payable by the petitioners. No costs.

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V. ESWARAIAH, J

April , 2005

Dsk

One Fair Copy to the Honourable Sri Justice V.Eswaraiah

(for his Lordships Kind Perusal)

To:

1. The Government of India, represented by its Secretary, Ministry of Power, Shram Shakthi Bhavan, Rafi Marg, New Delhi.

2. The National Thermal Power Corporation Limited, represented by its Chairman, Hemkunt Chambers, 10th Floor, 89, Nehru Place, New Delhi.

3. Power Grid Corporation of India Limited, represented by its Chairman, New Delhi.

4. The A.P. State electricity Board, Represented by its Secretary, Vidyut Soudha, Somajiguda, Hdyerabad.

5. A.P. Transmission Corporation Limited, represented by its Chairman and Managing Director, Vidyut Soudha, Somajiguda, Hyderabad.

6. The Superintending Engineer, Operation, Eastern Power Distribution Company of A.P. Limited, Vizianagaram.

7. The Senior Accounts Officer, Operation Cirlce, Eastern Power Distribution Company of A.P. Limited, Vizianagaram.

9. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs,New Delhi.

10.The Secretary, A.P.Advocates' Association Library,High Court Buildings,Hyderabad.

11. 8 L.R. Copies